

☐ EXPEDITE
☐ No hearing set
☒ Hearing is set:

Date: Fri, April 5, 2019

Time: 9:00 a.m.

Judge: Hon. James Dixon

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON**

STATE OF WASHINGTON,

Case No. 17-2-01546-34

Plaintiff

v.

**DEFENDANT TIM EYMAN'S REPLY TO THE
STATE'S DEFENSE OF ITS' PROPOSED
INJUNCTION ON EYMAN'S FUTURE
POLITICAL ACTIVITY**

TIM EYMAN, et al.,

Defendants.

I. INTRODUCTION

My opening brief was written by brilliant attorneys, steeped in the intricacies and nuances of court precedents, the First Amendment, and other constitutional protections. This brief here was written by me because the State has successfully bullied current and prospective legal counsel from representing me in this case. The chilling effect the State has had on the legal community is a perfect metaphor for the chilling effect they will have on the citizenry if the lifetime ban it covets is not rejected by the Court.

**II. A PROHIBITION ON POLITICAL SPENDING IS THE EQUIVALENT OF A
PROHIBITION ON POLITICAL SPEECH**

After the Attorney General's splashy press conference in 2017 where the State publicly announced its lawsuit against me, Seattle PI columnist Joel Connelly wrote: "Ferguson is also

DEFENDANT TIM EYMAN'S RESPONSE TO THE STATE'S
DEFENSE OF ITS' PROPOSED LIFETIME BAN ON EYMAN'S
FUTURE POLITICAL ACTIVITY - 1
17-2-01546-34

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1 pursuing a 'nuclear option' against Eyman ... The AG will ask the court to permanently bar
2 Eyman from participating in or directing financial transactions for any political committees ... If
3 the 'nuclear option' succeeds, 'Eyman will have to find something else to do with his life' ..."¹

4 That assessment hits the nail on the head. I have been organizing and promoting citizen
5 initiatives for 20 years – the State is asking the Court to impose a penalty on me that will force
6 me to give that up. It seeks to prevent me – in perpetuity – from teaming up with other like-
7 minded citizens to initiate political ideas and reforms that voters can vote on. If the Court were to
8 grant the State their proposed penalty – “barring Mr. Eyman from managing, controlling,
9 negotiating, or directing financial transactions of any kind for any political committee in the
10 future” – I would have no idea how to comply with that and still be politically active at all.
11 Indeed, it may not be possible. The words and phrases are so broad, so vague, so open to
12 interpretation, that it would be impossible for me to know what I could or couldn't do or say.
13 Having been involved with scores of initiatives campaigns, I know there are hundreds, if not
14 thousands, of financial transactions and decisions made for each campaign. Some are minor,
15 others more significant. For example, last year, Karen and I sold off our family's retirement fund
16 and loaned \$500,000 to kick-start the signature drive for our \$30 Tabs Initiative. Loaning money
17 to an initiative committee is perfectly legal under the Fair Campaign Practices Act, but it would
18 be illegal for me to do so in the future because such an action could be interpreted to violate the
19 ambiguous phrase “directing financial transactions of any kind” because I “directed” the money
20 to the committee by loaning it. I'm currently the sole officer of the political action committee
21
22
23

24 ¹ Joel Connelly, *AG Ferguson hits initiative promoter Eyman with \$2.1 million campaign*
25 *violations suit*, SEATTLEPI (Mar. 31, 2017),
26 <https://www.seattlepi.com/local/politics/article/Eyman-is-hit-wi-2-1-million-campaign-finance-11041705.php>.

1 that owes us that \$500,000 – if I tell the committee’s treasurer to issue a partial loan repayment,
2 wouldn’t that be illegal because I was “directing” the treasurer to do so? What if I stepped down
3 from the committee and then asked the treasurer to do a loan repayment? Illegal? It would be
4 under the State’s requested remedy. Is “asking” the same as “directing”? I don’t know. Could I
5 encourage people to donate to a committee, whether it was mine or someone else’s? A political
6 donation is certainly a “financial transaction of any kind” so me asking folks to give money to a
7 political committee would be unlawful. Last week, I ordered a banner for a referendum and just
8 yesterday, I paid \$3.30 to print up 5 copies of a petition for an initiative I’m sponsoring. Even
9 that basic level of political activity would be illegal under the State’s requested remedy.
10

11 Loaning money to an initiative committee should be legal, having a loan repaid should be
12 legal, encouraging people to donate to a political cause should be legal, and yes, ordering a
13 banner and printing up petitions should be legal.
14

15 The ability to spend money on political speech is the equivalent of making the speech
16 itself. The Supreme Court established that fundamental truth over 40 years ago. And this ability
17 to speak freely on matters of public concern is at the heart of the First Amendment protections
18 granted to all Americans regardless of their past. The State’s proposed punishment – filled with
19 words and phrases undefined and not permitted by the FCPA – guarantees nothing illegal will
20 occur because the only way to guarantee not running afoul of the State’s lifetime ban is by not
21 being politically active at all. Such a ban deprives me of all rights protected under the First
22 Amendment.
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1 **III. THE STATE COMPLAINS THAT I DID NOT IDENTIFY PRECEDENT**
2 **SUPPORTING MY OPPOSITION TO THE STATE’S LIFETIME BAN**

3 On page 21 of its Reply brief, the State writes, “Defendant Eyman has provided no
4 authority that suggests that he has a constitutional right to personally manage the financial
5 transactions of a political committee under the First Amendment.”

6 The State’s argument runs contrary to the very definition of a political action committee.
7 According to Merriam-Webster, a PAC is “a group formed (as by an industry or an issue-oriented
8 organization) to raise and contribute money to the campaigns of candidates likely to advance the
9 group’s interests.”² The entire purpose of a PAC is to raise money and direct payments to
10 amplify the political speech of its supporters. Collaboration in the management of financial
11 transactions is necessary for my right of association with a PAC. My motion includes literally
12 hundreds of citations as to why I am guaranteed the right to freedom of speech and association
13 and how the State’s lifetime ban runs completely contrary to those previous court rulings.
14

15 In addition, no state government has ever sought such a blatantly unconstitutional
16 injunction. If there were a court ruling the State could cite supporting such a ban, the State would
17 have included it in their brief – it did not, because it cannot. Instead, the State cites an
18 administrative law ruling by the Commodity Futures Trading Commission (“CFTC”). I have not
19 claimed that I have a First Amendment right to act as a commodity fund manager. No core First
20 Amendment right was implicated in the CFTC’s injunction. Should the State, or this Court,
21 desire additional citations, I have included them in Exhibit B.
22
23
24

25
26 ² Merriam-Webster, *Definition of Political Action Committee*, <https://www.merriam-webster.com/dictionary/political%20action%20committee> (last visited Mar. 29, 2019).

1 The State is essentially saying that money is not speech. That I'll still be able to exercise
2 my right to speak but only if money is not involved. How can a reasonable person do that with
3 any degree of certainty when the State's proposed injunctive relief is so nebulous, undefined, and
4 open to interpretation? The State says I cannot "personally manage the financial transactions of a
5 political committee" – I have no idea what that means.

6 **IV. THE STATE'S LIFETIME BAN IS NOT CONTENT-NEUTRAL**

7 On page 22, the State writes, "... the limitation on Defendant Eyman's handling of
8 financial transactions is content neutral. The injunction would bar him from handling financial
9 transactions for any political committee, regardless of its message."
10

11 It would only be content-neutral if my politics were content-neutral. But they are not. I
12 co-sponsor initiatives that put limits on governments' power. And thousands of heroic citizens
13 across our state help me and my team get them on the ballot and millions of voters pass them. As
14 outlined in Exhibit A,³ from 1998-2018, a total of 60 statewide initiatives qualified for a public
15 vote – of those, I co-sponsored 16 of them. Of the 20 million voter signatures submitted during
16 that time, over 25% of them appeared on our petitions.
17

18 Of the 60 initiatives that qualified for a public vote, 29 contained conservative-leaning
19 policies – and voters passed 14 of them. 70% of them -- 10 of 14 – were co-sponsored by me.
20 Examples include \$30 tabs, 1% property tax cap, 2/3 vote to raise taxes, performance audits of
21 government. During that same time, voters passed 23 liberal initiatives compared to 14
22

23
24 ³ Exhibit A contains information on initiative campaigns in Washington between 1998 through
25 2018 generated with information obtained directly from the Secretary of State's website:
26 <https://www.sos.wa.gov/elections/initiatives/statistics.aspx> and the PDC's website:
[https://www.pdc.wa.gov/browse/more-ways-to-follow-the-](https://www.pdc.wa.gov/browse/more-ways-to-follow-the-money/committees/continuing?category=Committees)
[money/committees/continuing?category=Committees.](https://www.pdc.wa.gov/browse/more-ways-to-follow-the-money/committees/continuing?category=Committees)

1 conservative ones. That's a roughly 2 to 1 ratio. If not for our 10 voter-approved conservative
2 initiatives, that ratio would've been 6:1. There is clearly a hunger among the electorate for
3 initiatives that limit governments' power. But there will be far fewer of them if the State's
4 injunction on me is imposed. Not just because it'll stop me, but because it will chill and deter
5 others from picking up where I left off. The State's lifetime ban is not content-neutral.

6 **V. THE STATE SAYS A COURT RULING ON THE LIFETIME BAN WILL ONLY**
7 **BE ADVISORY**

8 The estate of Gerald Petersen is withholding a \$91,000 distribution because of the
9 State's threatened lifetime ban. If the threat of the lifetime ban is lifted by the Court, there will
10 be \$91,000 worth of political speech expressed through the political action committee I am an
11 officer of. If the lifetime ban is affirmed or a decision on it is delayed, that much speech will not
12 be communicated, that much political activity will not be exercised. Significantly, the absence of
13 that \$91,000 may very well prevent a ballot measure from qualifying for a vote or a ballot
14 measure from passing in November. The lifetime ban is not some abstract, theoretical concept –
15 every day the threat of it hangs over my head like the Sword of Damocles, it is imposing real,
16 quantifiable harm. When my speech is restrained, deterred, and chilled, the speech of those who
17 agree with me – supporters of the ballot measures I sponsor – is limited as well.

18 Furthermore, the State argues that it has yet to demand an injunction. On page 18, line
19 15 of its Opposition, the State writes “Defendant Eyman’s motion is premature and improperly
20 requests an advisory opinion on an injunction that has yet to be requested.” This statement is
21 flawed for two reasons. 1) The State’s Complaint and Amended Complaint specifically request
22 that relief. This motion for partial summary judgement is appropriate to quash that request. It
23 would not be an advisory opinion, it would be a partial summary judgement on the actual relief
24
25
26

1 requested by the State. 2) The State has demonstrated every intention of seeking this injunction.
2 On page 20, line 19, the State writes “The injunctive relief the State will seek at the end of this
3 case...” The nature of the proposed injunction is sufficiently unconstitutional at its current state
4 of description to warrant a partial summary judgement in my favor at this time.

5 **VI. THE STATE’S CASE AGAINST ME IS DEEPLY FLAWED**

6 The State blatantly overreaches by alleging violations of statutes that it wishes applied to
7 me but clearly do not. By their own unambiguous language, neither RCW 42.17A.235 nor .240
8 (“Reporting Provisions”) of the Fair Campaign Practices Act apply to me, because those
9 provisions only apply to campaign treasurers and political candidates. I am neither. Similarly,
10 under no circumstances does RCW 42.17A.445 (“Personal Use Provision”) apply to me, because
11 none of the funds at issue were campaign funds. Well-established rules of statutory construction
12 prohibit the contortion of a statute’s plain language to say what it clearly does not.
13

14 **VII. NONETHELESS, WHAT IF ALL THE STATE’S ALLEGATIONS ARE TRUE?** 15 **THEY’RE NOT, BUT LET’S JUST PRETEND THEY ARE**

16 I love movies. And I really like Tom Cruise movies. I grew up watching Top Gun and
17 Rain Man. But one of my all-time favorite Tom Cruise movies was called “Minority Report.” In
18 it, the police had discovered a way to arrest people before committing their crimes. The movie
19 dramatically illustrated the loss of due process and the eagerness of the government to sacrifice it.
20 And frankly, that sounds eerily similar to the State’s arguments in their brief (Page 22, lines 8-
21 10): “an injunction limiting his opportunity to violate the FCPA in the future would pass
22 constitutional scrutiny). But even their distorted, mischaracterized allegations against me aren’t
23 even crimes – the State’s case began with whether two transactions seven years ago needed to be
24 included on campaign reports – our treasurer did not think so, but the State disagrees.
25

1 Due process under the Fifth and Fourteenth Amendments to the United States
2 Constitution demands that laws not “trap the innocent by not offering fair warning.” *Grayned v.*
3 *City of Rockford*, 408 U.S. 104, 108 (1972). Due process also guarantees that ordinary people
4 have “fair notice” of the conduct a statute proscribes. *Papachristou v. Jacksonville*, 405 U. S.
5 156, 162 (1972). *See also Excel Corp. v. U.S. Dep’t of Agric.*, 397 F.3d 1285, 1297 (10th Cir.
6 2005) (explaining lack of fair notice in administrative context).

7
8 I had neither fair notice or fair warning when undertaking the actions at issue in this
9 action and had no idea that those transactions supposedly (1) needed to be disclosed in reports; or
10 (2) could result in a lifetime ban from any political activity. Accordingly, subjecting me to such
11 penalty would clearly offend Due Process.

12 Regardless, say for argument sake that those two transactions needed to be included on
13 those 2012 campaign reports – should I be banned for life for not including them, especially
14 when the FCPA makes it the responsibility of the treasurer to do the reporting? Of course not.

15
16 The State also claims that because I am a full-time political activist that anytime a friend
17 or family member helps me – like with a gift to my legal defense fund – that it must be a political
18 donation. That I am a walking, talking political action committee where no transaction is
19 personal, they’re all political. Under the State’s unprecedented, untested legal theory, even my
20 personal expenditures would need to be reported on a monthly basis. Buying groceries would
21 need to be reported because the food I ate allowed me to continue to organize initiatives.
22
23 Regardless, suppose all my personal transactions are in fact political transactions requiring
24 monthly reporting – should I be banned for life from doing initiatives for not anticipating this
25 bizarre legal interpretation? No, I should not.

1 Let's pretend that I willfully ignored the advice of my treasurer, my accountant, and all
2 those around me who know, like I do, what a minefield Washington's campaign reporting
3 requirements are, and I engaged in core political speech anyway, qualifying 16 statewide
4 initiatives for a public vote in the process (Exhibit A). Who was harmed? No one. Did our
5 political committees spend donors' money irresponsibly? Our initiatives qualified for nearly half
6 the cost as other initiatives. Non-Eyman initiatives spent, on average, \$1,250,097 to qualify –
7 Eyman initiatives spent, on average, \$672,448 to qualify (see Exhibit A). In 2012, our tougher-
8 to-raise-taxes initiative spent \$1.2 million to qualify while the only other 2012 initiative spent
9 \$2.8 million. (Exhibit A). I consistently qualify our initiatives for a public vote more affordably
10 than anyone. The public has a right to know who's backing the initiatives that are on the ballot.
11 Did the public not know that I supported my own initiatives? More times than not, opponents of
12 my initiatives focus their entire anti-initiative argument by reminding voters that I'm the sponsor.
13 My name is in the voters' pamphlet, in newspapers, radio, TV, and social media. Voters are
14 clearly able to separate their opinion of the initiative's sponsor from their opinion of the initiative
15 itself.
16

17
18 The State badly miscalculated when they included such ridiculous penalties. \$2.1 million
19 in fines is egregious, but a lifetime ban on future political activity? That rises to an
20 unprecedented level of unconstitutionality.

21 **VIII. IN THE STATE'S BRIEF, IT DOES NOT LIMIT ITS INJUNCTION TO**
22 **POLITICAL TRANSACTIONS**

23 On page 20, the State writes: "The scope of the injunction will be aimed at preventing
24 him from 'managing, controlling, negotiating, or directing financial transactions.'"
25

1 Here the State expands its prohibition beyond "political transactions" to encompass all
2 "financial transactions." This means there is no way I can be sure of compliance in the future,
3 under this injunction, other than by avoiding not only direct involvement with a political
4 committee, but by also avoiding speaking with people involved in a committee. The State stands
5 prepared to define my activities as political, and me personally as a political action committee, as
6 long as I am speaking with political people and interacting with those who support citizen
7 initiatives.

8
9 If a friend gives me a \$1 gift for my personal use, and I continue to speak for an
10 initiative, am I now a political action committee? And if I am a PAC, are all my financial
11 transactions PAC transactions, ensuring I am in violation of the State's lifetime ban?

12 Does \$1 given to me by someone who sympathizes with my plight as a government
13 target turn me into a PAC, and put me in violation of the proposed injunction? What if a political
14 supporter hires me for a conventional job? Does the State reserve the right to evaluate my job
15 performance to see whether I was overpaid, and therefore, as a political committee, I am in
16 violation of the injunction?

17
18 This is not just a lifetime ban on financial dealings, but a ban on political speech,
19 association, and activities involving any question or candidate or issue in the state of Washington,
20 all rights which are inalienable under the United States Constitution.

21 **IX. THE STATE CRITICIZES MY CURRENT PLEAS FOR HELP**

22 On page 17, the State writes: "Defendant Eyman continues to seek compensation
23 specifically for his political work. On PermanentOffense.com, the website that Defendant
24 Eyman's political committee uses to promote its initiatives and solicit reportable political
25

1 contributions, he features pleas for personal financial support of Defendant Eyman and donations
2 to fund his legal defense.”

3 It’s not illegal to ask for assistance as I defend myself from the State’s legal assault. It’s
4 my First Amendment right to ask people for help, particularly when it comes to protecting my
5 rights to petition the State and my right to associate. When the State is seeking a \$2.1 million
6 fine (that I don’t have) and escalating my legal costs with what is functionally a SLAPP lawsuit,
7 it is a necessity for me to ask for help. It is not compensation, it is friends and family being
8 compassionate and generous and helping a fellow citizen survive a brutal political attack.
9

10 A fair interpretation of prohibiting me from “negotiating or directing financial
11 transactions for any kind of political activity” would preclude me from raising money for a
12 political committee.

13 But in light of the State’s criticism of my legal defense pleas, one can easily interpret
14 their verbiage to mean something even broader: that Tim Eyman cannot raise any money for ...
15 Tim Eyman. Nor can I earn an income. Or have a bank account. Because the State is claiming
16 that I, Tim Eyman personally, am a political committee.
17

18 Since the State complains of my pleading for financial help, where friends and family
19 are clearly told they are giving me money for my personal use, my family, or for me to defend
20 myself from the State’s attacks, isn’t the State’s real goal, then, to cut me off from all financial
21 support? Given all the subpoenas, depositions, and other harassment of friends and family who
22 have supported me previously, the State is clearly determined to isolate me and make it
23 impossible, if not literally illegal, for me to not only engage in political activity, but to engage in
24 any financial transactions at all. The fact that the State devotes 17 pages to highlighting a laundry
25 list of horrors that they are accusing me of does not make their argument in favor of a lifetime
26

1 ban more persuasive. As my previous counsel pointed out, if the State's proposed lifetime ban is
2 imposed on me, sex offenders will have greater free speech rights than I will (*Packingham v*
3 *North Carolina*, 137 S. Ct. 173 – Supreme Court 2017; *State v. Padilla*, 416 P. 3d 712 – Wash:
4 Supreme Court 2018). I will be barred from “managing, controlling, negotiating, or directing
5 financial transactions of any kind for any political committee in the future” – but convicted felons
6 will not (there is no such restriction under the FCPA). The absurdity of the State's position is
7 difficult to overstate.

8 X. CONCLUSION

9
10 The State's threatened injunction is incredibly broad and hopelessly vague – it would be
11 impossible to comply with while exercising my First Amendment rights. As numerous court
12 cases have established, money is speech: a limit on financial resources is a limit on my ability to
13 amplify my speech using those financial resources (as illustrated by the Petersen estate
14 distribution which is being withheld because of the State's threatened lifetime ban). Prior
15 restraint is a bed-rock constitutional principle that is clearly at issue with the State's draconian ill-
16 defined verbiage. The State's proposed penalty doesn't just punish me for alleged past wrongs, it
17 punishes me in the future by altogether prohibiting political speech I haven't even contemplated
18 yet.

19
20 I am 53 years old. I have been organizing and promoting initiatives for 22 years and I
21 fully intend to continue doing so for another 20-30 years. There are a lot of voters who support
22 the ideas I promote. But even if no one did, I should still have the right to express those ideas in
23 the political arena via citizen initiatives without being muzzled.


24
25 The Court should decline the State's invitation to rewrite the Fair Campaign Practices
26 Act, the Washington state Constitution, and the United States Constitution. I ask the Court to

1 rule that the injunctive relief being sought by the State is impermissible under the FCPA, the state
2 Constitution, and the US Constitution. It is an unprecedented interpretation of the law and of my
3 rights under the Constitution. It should be dismissed because there is no basis in law for it.

4 I declare under penalty of perjury under the laws of the State of Washington that the
5 foregoing is true and correct.

6 Dated this 29th day of March, 2019 at Bellevue, Washington.

7
8
9 Sign:


Tim Eyman, *pro se*

CERTIFICATE OF SERVICE

I CERTIFY UNDER PENALTY OF PERJURY under the laws of the United States of America that on March 29, 2019, I served the foregoing via email per agreement between the parties on the following:

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By 
Tim Eyman, *pro se*

EXHIBIT A

Information on initiative campaigns in Washington (1998 through 2018)

Year	Init #	Topic of initiative	Signatures Submitted	Amt spent to get on the ballot	WON/ LOST		
Jul-18	I-1631	Carbon tax	349,063	\$ 2,078,550	LOST	L	
	I-1634	No Groceries Tax	381,479	\$ 5,358,406	WON	C	
	I-1639	Gun control	378,085	\$ 4,085,082	WON	L	
Jan-18	I-940	De-Escalate Washington	359,895	\$ 1,360,509	WON	L	
Jul-16	I-1433	Minimum wage	345,907	\$ 1,823,758	WON	L	
	I-1464	Taxes for politicians	327,103	\$ 1,789,742	LOST	L	
	I-1491	Gun restrictions	341,710	\$ 1,674,587	WON	L	
	I-1501	SEIU identity theft	341,376	\$ 1,203,763	WON	L	
Jan-16	I-732	Carbon taxes	363,126	\$ 814,455	LOST	L	
	I-735	Overturn Citizens United	333,040	\$ 451,604	WON	L	
Jul-15	I-1366	2/3 Constitutional Amend	339,236	\$ 1,342,608	WON	C	EYMAN
	I-1401	Protect animals	347,247	\$ 1,731,669	WON	L	
Jul-14	I-1351	Smaller class size	348,072	\$ 713,654	WON	L	
Jan-14	I-591	Protect Gun Rights	349,860	\$ 705,628	LOST	C	
	I-594	Gun background check	346,834	\$ 1,524,591	WON	L	
Jan-13	I-517	Right to Vote on Initiatives	346,906	\$ 305,454	LOST	C	EYMAN
	I-522	GMO labeling	353,331	\$ 406,869	LOST	L	
Jul-12	I-1185	Extend 2/3's for tax hikes	320,003	\$ 1,233,279	WON	C	EYMAN
	I-1240	Charter schools	357,252	\$ 2,813,367	WON	C	
Jan-12	I-502	Decriminalize marijuana	354,608	\$ 1,144,104	WON	L	
Jul-11	I-1125	Limit tolls	328,632	\$ 1,273,127	LOST	C	EYMAN
	I-1163	SEIU unionization	339,934	\$ 1,380,300	WON	L	
	I-1183	Costco liquor privatization	361,339	\$ 1,866,093	WON	C	
Jul-10	I-1053	Reinstate 2/3's for tax hikes	337,726	\$ 929,692	WON	C	EYMAN
	I-1082	Workmans comp reform	345,541	\$ 875,740	LOST	C	
	I-1098	State income tax	385,061	\$ 894,970	LOST	L	
	I-1100	Costco liquor privatization	395,917	\$ 991,090	LOST	C	
	I-1105	Dist'rs liquor privatization	358,525	\$ 2,128,935	LOST	C	
	I-1107	Tax repeal (soda, candy)	408,361	\$ 2,487,871	WON	C	
Jul-09	I-1033	Lower property taxes/\$ cap	315,444	\$ 598,081	LOST	C	EYMAN
Jul-08	I-985	Reduce Traffic Congestion	301,711	\$ 584,982	LOST	C	EYMAN
	I-1000	Doctor assisted suicide	317,272	\$ 1,399,061	WON	L	
	I-1029	SEIU 775 Health care	318,047	\$ 664,102	WON	L	
Jul-07	I-960	Close loopholes in I-601	314,504	\$ 543,255	WON	C	EYMAN
Jul-07	I-920	Estate tax	395,219	\$ 850,630	LOST	C	
	I-933	Property rights	317,353	\$ 657,680	LOST	C	

	I-937	Clean Energy	337,804	\$	817,341	WON	L	
Jul-05	I-900	Performance Audits	311,858	\$	617,815	WON	C	EYMAN
	I-901	Smoking Ban	321,615	\$	730,258	WON	L	
	I-912	No New Gas Tax	400,996	\$	381,211	LOST	C	
Jan-05	I-330	Med Mal (doctors)	319,146	\$	866,503	LOST	C	
	I-336	Med Mal (lawyers)	300,776	\$	732,931	LOST	L	
Jul-04	I-892	Lower property taxes	274,293	\$	746,452	LOST	C	EYMAN
	I-872	Top-Two Primary	308,402	\$	540,592	WON	L	
	I-884	Sales tax for education	321,932	\$	1,207,979	LOST	L	
Jan-04	I-297	Hanford	280,382	\$	359,345	WON	L	
Jul-03	I-841	Ergonomics repeal	258,411	\$	430,410	WON	C	
Jul-02	I-776	\$30 Tabs	260,898	\$	393,424	WON	C	EYMAN
	I-790	Firefighters	345,543	\$	1,116,614	WON	L	
Jul-01	I-747	1% Property Tax Limit	290,704	\$	496,845	WON	C	EYMAN
	I-773	Tobacco tax/health care	275,081	\$	815,595	WON	L	
	I-775	Home health care	304,327	\$	658,106	WON	L	
Jul-00	I-713	No animal trapping	261,268	\$	482,012	WON	L	
	I-722	2% Property Tax Limit	272,678	\$	526,349	WON	C	EYMAN
	I-728	Smaller class size	297,199	\$	739,027	WON	L	
	I-729	Charter schools	306,361	\$	812,430	LOST	C	
	I-732	Higher Teacher pay	298,722	\$	325,590	WON	L	
	I-745	90% to roads	274,490	\$	787,838	LOST	C	EYMAN
Jul-99	I-695	\$30 Tabs/vote taxes	514,141	\$	49,452	WON	C	EYMAN
	I-696	Ban all nets (fishing)	234,750	\$	111,509	LOST	L	
Jan-98	I-200	No race/gender preferences	280,511	\$	330,511	WON	C	EYMAN
		From 1998 through 2018						
		Total initiatives qualified	60					
		# of Eyman initiatives qualified	16					
		How many initiatives approved	37					
		Eyman initiatives approved	10					
		Total conservative initiatives qualified	29					
		How many conservative initiatives approved	14					
		How many Eyman initiatives approved	10					
		Total liberal initiatives qualified	31					
		How many liberal initiatives approved	23					
		Average spent to qualify non-Eyman initiatives (44)		\$	1,250,097			
		Average spent to qualify Eyman's initiatives (16)		\$	672,448			
		Total signatures for all initiatives	20,177,007					
		Total signatures for Eyman initiatives	5,083,735					

EXHIBIT B

All political action is governed by the First Amendment. There is a long history of litigation in campaign financing, including federal law governing the Federal Elections Commission, and a litany of cases including: Contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities. *Buckley v. Valeo*, 424 US 1, 14 (1976). Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U. S. 476, 484 (1957).

Although First Amendment protections are not confined to "the exposition of ideas," *Winters v. New York*, 333 U. S. 507, 510 (1948), "there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs, . . . of course includ[ing] discussions of candidates. . . ." *Mills v. Alabama*, 384 U. S. 214, 218 (1966). This no more than reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," *New York Times Co. v. Sullivan*, 376 U. S. 254, 270 (1964). In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation. As the Court observed in *Monitor Patriot Co. v. Roy*, 401 U. S. 265, 272 (1971), "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."

So, the remedy requested by the AG is a bit different than trading on Commodities Futures.

The First Amendment protects political association as well as political expression. The constitutional right of association explicated in *NAACP v. Alabama*, 357 U. S. 449, 460 (1958), stemmed from the Court's recognition that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." Subsequent decisions have made clear that the First and Fourteenth Amendments guarantee " `freedom to associate

with others for the common advancement of political beliefs and ideas,' " a freedom that encompasses " '[t]he right to associate with the political party of one's choice.' " *Kusper v. Pontikes*, 414 U. S. 51, 56, 57 (1973), quoted in *Cousins v. Wigoda*, 419 U. S. 477, 487 (1975).

The standard that courts apply to determine whether laws restricting campaign contributions and expenditures unconstitutionally impinge on a plaintiff's rights of association and speech was established by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) and its progeny. In *Buckley*, the Supreme Court held that contributing to political campaigns is an activity protected by the First Amendment's guarantees of free association and free speech. *Id.* at 14-19, 96 S.Ct. 612. *Lavin v. Husted*, 803 F. Supp. 2d 756, 761 (Dist. Court, ND Ohio 2011).

As the Supreme Court stated in one of the most important sentences in First Amendment history, "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." *Cablevision Systems Corp. v. FCC*, 597 F. 3d 1306, 1328 (Court of Appeals, Dist. of Columbia Circuit 2010), citing *Buckley v. Valeo*, 424 U.S. 1, 48-49, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976).

The First Amendment provides that "Congress shall make no law... abridging the freedom of speech," A prohibition such as the one proposed by the AG is an outright ban on speech, backed by criminal sanctions. It is a ban notwithstanding the fact that a PAC created by a corporation can still speak, for a PAC is a separate association from the corporation. Because speech is an essential mechanism of democracy — it is the means to hold officials accountable to the people — political speech must prevail against laws that would suppress it by design or inadvertence. Laws burdening such speech are subject to strict scrutiny, which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *WRTL*, *supra*, at 464, 127 S.Ct. 2652. For this reason, the sanction proposed by the AG *will always fail* constitutional scrutiny. Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints or to distinguish among different speakers, which may be a means to control content. The Government may also commit a constitutional wrong when by law it

identifies certain preferred speakers. **There is no basis for the proposition that, in the political speech context, the Government may impose restrictions on certain disfavored speakers.** Both history and logic lead to this conclusion. *Citizens United v. Federal Election Com'n*, 558 US 310, 130 S.Ct. 876, 882-3 (Supreme Court 2010).

The Court has recognized that the First Amendment applies to corporations, e.g., *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 778, n. 14, 98 S.Ct. 1407, 55 L.Ed.2d 707, and extended this protection to the context of political speech, see, e.g., *NAACP v. Button*, 371 U.S. 415, 428-429, 83 S.Ct. 328, 9 L.Ed.2d 405. Addressing challenges to the Federal Election Campaign Act of 1971, the Court in *Buckley v. Valeo*, 424 U.S. 1 (per curiam), upheld limits on direct contributions to candidates, 18 U.S.C. § 608(b), recognizing a governmental interest in preventing quid pro quo corruption. 424 U.S., at 25-26, 96 S.Ct. 612.

Bellotti reaffirmed the First Amendment principle that the Government lacks the power to restrict political speech based on the speaker's corporate identity. 435 U.S., at 784-785, 98 S.Ct. 1407.

The First Amendment prohibits Congress from fining or jailing citizens, or associations of citizens, for engaging in political speech. *Citizens United v. Federal Election Com'n*, 558 US 310, 130 S.Ct. 876, 883 (Supreme Court 2010). First Amendment protections do not depend on the speaker's "financial ability to engage in public discussion." *Buckley*, supra, at 49, 96 S.Ct. 612. These conclusions were reaffirmed when the Court invalidated 884*884 a BCRA provision that increased the cap on contributions to one candidate if the opponent made certain expenditures from personal funds. *Davis v. Federal Election Comm'n*, 554 U.S. 724, 742, 128 S.Ct. 2759, 171 L.Ed.2d 737.

The First Amendment provides that "Congress shall make no law ... abridging the freedom of speech." Laws enacted to control or suppress speech may operate at different points in the speech process. The following are just a few examples of restrictions that have been attempted at different stages of the speech process — all laws found to be invalid: restrictions requiring a permit at the outset, *Watchtower Bible & Tract Soc. of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 153, 122 S.Ct. 2080, 153 L.Ed.2d 205 (2002); imposing a burden by impounding proceeds on receipts or royalties, *Simon &*

Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 108, 123, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991); seeking to exact a cost after the speech occurs, New York Times Co. v. Sullivan, 376 U.S., at 267, 84 S.Ct. 710; and subjecting the speaker to criminal penalties, Brandenburg v. Ohio, 395 U.S. 444, 445, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) (per curiam). Citizens United v. Federal Election Com'n, 558 US 310, 130 S.Ct. 876, 896-7 (Supreme Court 2010).

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. See Buckley, supra, at 14-15, 96 S.Ct. 612 ("In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential"). The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment "'has its fullest and most urgent application' to speech uttered during a campaign for political office." Eu v. San Francisco County Democratic Central Comm., 489 U.S. 214, 223, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989) (quoting Monitor Patriot Co. v. Roy, 401 U.S. 265, 272, 91 S.Ct. 621, 28 L.Ed.2d 35 (1971)); see Buckley, supra, at 14, 96 S.Ct. 612 ("Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution"). Citizens United, op.cit.

For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are "subject to strict scrutiny," which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." WRTL, 551 U.S., at 464, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.).